

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Case No. 19-cr-0096 (WMW/HB)

Plaintiff,

ORDER

v.

Travis Kyle Mayer,

Defendant.

This matter is before the Court on the motion of Plaintiff United States of America to set a deadline by which Defendant Travis Kyle Mayer must file a motion to suppress newly discovered evidence. (Dkt. 44.) Mayer opposes the motion.

The parties filed pretrial motions, including motions to suppress evidence, in April 2019. The Court ruled on all such motions on or before August 22, 2019. In July 2019, however, the United States gained access to two cell phones that had previously been seized from Mayer and began the process of decrypting the contents of these cell phones. The United States subsequently notified Mayer that it had obtained additional evidence from these two cell phones and that it intends to obtain a superseding indictment that includes at least three additional charges. However, a superseding indictment has not been filed, and the trial is scheduled to begin on October 21, 2019. The United States now seeks an order setting a deadline by which Mayer must file a motion to suppress this newly discovered evidence.

A district court “may, at the arraignment or as soon afterward as practicable, set a deadline for the parties to make pretrial motions and may also schedule a motion hearing.”

Fed. R. Crim. P. 12(c)(1). If the district court does not set a deadline, “the deadline is the start of trial.” *Id.* The United States has represented that it intends to obtain a superseding indictment. But the United States has not yet done so, and Mayer has not been arraigned on any additional charges. For this reason, the United States’s motion is premature. Moreover, even if the United States intends to use this newly discovered evidence in connection with the *currently pending* charges against Mayer, a reasonable and meaningful opportunity for Mayer and his counsel to review the new evidence is warranted. *See id.* (providing that a district court has discretion when setting pretrial deadlines); *cf.* Fed. R. Crim. P. 12(b)(4) (recognizing that notice to a defendant that specified evidence may be used at trial is intended to provide the defendant an opportunity to move to suppress that evidence before trial).

The Court is mindful that a trial date has been set and is approaching. If either party believes that more time is necessary to prepare for trial, it is that party’s responsibility to file the appropriate motion, with legal and factual support, seeking such relief.

Based on the foregoing analysis and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiff United States of America’s motion to set a deadline by which Defendant Travis Kyle Mayer must file a motion to suppress newly discovered evidence, (Dkt. 44), is **DENIED**.

Dated: September 13, 2019

s/Wilhelmina M. Wright
Wilhelmina M. Wright
United States District Judge